IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision : September 05, 2006

1. Criminal Appeal No. 438-DB of 2001

Sarabjit Singh versus State of Punjab

2. Criminal Appeal No. 825-SB of 2001

Ranjit Singh and Amrik Singh versus State of Punjab

3. Criminal Revision No. 382 of 2002

Jaspal Singh versus Sarabjit Singh and others

Coram: Hon'ble Mr. Justice Virender Singh
Hon'ble Mr. Justice A.N. Jindal

Present: Mr. R.S.Ghai, Senior Advocate with
Mr. Bipin Ghai, Advocate for the appellant in
Criminal Appeal No. 438-DB of 2001

Mr. VS Rana, Advocate for appellant in
Criminal Appeal No. 825-SB of 2001

Mr. M.S. Sidhu, Senior Deputy Advocate General, Punjab
assisted by Mr. H.S.Bhullar, Advocate for the complainant

Virender Singh, J.

Vide this judgment we are disposing Criminal Appeal No. 438-

DB of 2001, filed by Sarabjit Singh son of Makhan Singh, Criminal Appeal No. 825-SB of 2001, filed by Ranjit Singh and Amrik Singh sons of aforesaid Makhan Singh and Criminal Revision No. 382 of 2002, filed by Jaspal Singh, the complainant, as all are arising out of one and the same judgment of learned Additional Sessions Judge, Ludhiana dated 14.7.2001.

The record reveals that Jaspal Kaur wife of Makhan Singh who was also booked in the present case was declared as a proclaimed offender.

Appellant Sarabjit Singh stands convicted under sections 302, 304-B, 498-A and 314 IPC. He has been sentenced to undergo life imprisonment with a fine of Rs 5000/-, in default of payment of fine to further undergo RI for one year under section 302 IPC; to undergo RI for seven years and fine of Rs 2000/-, in default of fine to further undergo RI for one year under section 304-B; to undergo RI for two years and fine of Rs 1000/-, in default of payment of fine to further undergo RI for six months under section 498-A IPC and to undergo RI for seven years and to pay a fine of Rs 2000/-, in default of payment of fine to further undergo RI for one year under section 314 IPC. All the substantive sentences have been ordered to run concurrently. Appellants Ranjit Singh and Amrik Singh have been convicted only under section 498-A IPC and have been sentenced to undergo RI for one year each and to pay a fine of Rs 1000/- each, in default of payment of fine to further undergo RI for six months. These two

appellants are the brothers-in-law (Jeth) of Jasbir Kaur who was married to Sarabjit Singh appellant. They will be referred to as 'accused' herein-after.

The case set up by the prosecution is that all the three appellants along with their mother had administered poisonous substance to her sharing their common intention. The allegation further goes that Jasbir Kaur was also subjected to cruelty by all the accused within seven years of her marriage and soon before her death in order to meet un-lawful demand of dowry. The allegation against Sarabjit Singh appellant was also to the effect that he had caused the mis-carriage of his wife Jasbir Kaur who was carrying foetus of 6/7 months old male child. The charge sheet reveals that the present three appellants were charged under sections 304-B and 498-A IPC whereas Sarabjit Singh appellant was charged under section 302 substantively. The trial court has acquitted Ranjit Singh and Amrik Singh of the charges punishable under sections 302 & 304-B IPC and convicted them under sections 498-A IPC only observing that they had not shared the common intention with the principal accused Sarabjit Singh in causing murder of Jasbir Kaur.

The State of Punjab has not preferred any appeal against the acquittal of Ranjit Singh and Amrik Singh. However, in Criminal Revision No. 382 of 2002 filed by the complainant, he has shown his grouse against acquittal of the aforesaid two accused. The said revision was ordered to be

heard with the main appeal filed by Sarabjit Singh (Criminal Appeal No. 438-DB of 2001).

The present case was registered on the statement (Ex. PF) of Jaspal Singh PW3 father of deceased Jasbir Kaur recorded by SI Prem Singh PW10 at Dayanand Medical College & Hospital, Ludhiana (for short DMC Ludhiana) on 25.9.1997 at 9.45 AM, on the basis of which formal FIR Ex. PF/2 was recorded at Police Station Sadar Ludhiana on the same day at 10.10 AM under sections 304-B/34 IPC. Special report reached the Ilaqa Magistrate (Judicial Magistrate Ist Class), Ludhiana on the same day at 3.45 PM through Constable Amarjit Singh. Jaspal Singh alleged in his complaint that his daughter Jasbir Kaur was married to Sarabjit Singh on 20.7.1997 at Ludhiana and that he had gifted sufficient dowry articles by spending Rs 7.5 lacs in the marriage in the form of Maruti car, television, refrigerator, gold ornaments, furniture and other articles etc. Sarabjit Singh and his daughter after marriage started staying at village Sekhewal. However after two months of the marriage her husband Sarabjit Singh, his brothers (Jeth) and his mother Jaspal Kaur started harassing his daughter for bringing more dowry articles. She along with her husband Sarabjit Singh came to village Bagrian (village of the complainant) and her daughter disclosed him (his father) that she was being harassed at her matrimonial home. It is then alleged that on the next day, Jasbir Kaur was left at her in-

laws house by her father and he made the accused side understand that he being father of three daughters could not fulfill their demands. It is then alleged that on 23.4.1997, Amrik Singh had contested some election and they had asked for some financial help through Jasbir Kaur. He arranged Rs 20,000/- through Commission Agent although demand of Rs 50,000/- was made from in-laws side. The said amount was paid to Sarabjit Singh appellant. It is then alleged that on 24.9.1997, wife of Jaspal Singh received a telephone call from her daughter calling her immediately at Ludhiana for some important talk. Consequently she went and after returning disclosed to her husband that the accused side was demanding Rs 5 lacs more and Sarabjit Singh appellant had given her beatings. It is then alleged that on the night intervening 23/24-9-1997 at about 11/12 O'clock, he received another call to the effect that Jasbir Kaur was in a serious condition. They reached the house of the accused and learnt from there that Jasbir Kaur was got admitted in DMC Ludhiana. He along with his wife and five-six other persons reached the said hospital at 6/7 AM and received the news that his daughter had expired. Jaspal Singh alleged that he was sure that his daughter Jasbir Kaur was killed by Sarabjit Singh, his two brothers Ranjit Singh and Amrik Singh and mother-in-law Jaspal Kaur as some poisonous substance/medicine was administered to her. On these allegations, the case was initially registered under sections 304-B/34 IPC.

After sending the ruqa for the registration of the formal FIR, Inspector Prem Singh PW10 who had reached DMC after receiving a telephone call from the said hospital with regard to admission of a case of poisoning, started his investigation and prepared the inquest report Ex. PE in the mortuary where dead body of Jasbir Kaur was lying. He also recorded statement of witnesses present there and made a request for post mortem examination on the dead body of Jasbir Kaur which was conducted on the same day by Dr. RK Sharma PW1. He noticed that blood was coming out of the mouth and nostrils. However, no external marks of injury were there. Lips and tongue were blue. Viscera was sent for chemical examination which contained stomach, segmetic, small and large intestines, pieces of lever, spleen and kidneys, some blood and saturated solution. The uterus was also opened which contained foetus of 6/7 months male child which was dead. The cause of death, according to doctor of autopsy, was due to aluminium phosphide of pesticides as detected in the viscera sent. Probable time that elapsed between injuries and death was within two hours and between death and postmortem was about fifteen hours. Clothes of deceased were also handed over to the police by the doctor.

Sarabjit Singh was arrested on 27.9.1997 whereas Amrik Singh and Ranjit Singh were arrested on 6.11.1997. On 8.11.1997 during interrogation, Ranjit Singh and Amrik Singh brought the police to their

house and produced certain dowry articles which were 60/65 in number and the same were taken into possession vide recovery memo Ex. PH. After completion of the investigation, the present three accused were challaned. As stated above, their mother Jaspal Kaur was declared as a proclaimed offender. All the three accused were charged accordingly as stated above.

To substantiate the charges, the prosecution has examined Dr. R.K.Sharma (PW1), Jaswinder Kaur mother of the deceased as PW2, Jaspal Singh father of deceased as PW3, PW4 SI Harbans Singh who partly investigated the case, PW5 RS Pandey Record Supervisor, DMC Hospital, Dr. Naveen Mittal PW6, ASI Sangramvir PW7, Constable Tarsem Singh PW8, PW9 Harminder Singh Draftsman, PW10 Inspector Prem singh, PW11 Devi Dayal, PW12 Harbhajan Singh, PW13 HC Varinder Pal. We shall be discussing the evidence of material witnesses at the relevant stage.

The plea taken by Ranjit Singh and Amrik Singh accused as emerges from their statement recorded under section 313 of the Code of Criminal Procedure is that they have been falsely implicated in this case and had never harassed Jasbir Kaur on account of any dowry demand. They were living separately from their parents and other brothers and have got separate ration cards also. The other plea taken is that their real brother Palwinder Singh aged about 27/28 years was in America and was bachelor at the time of occurrence. The parents of the deceased were pressurising her

to arrange marriage alliance with her younger sister with aforesaid Palwinder Singh to which they were not agreeing to. For this reason, Jasbir Kaur used to remain under depression on account of continuous pressure from her parents side. The parents of the deceased were feeling sore against them due to the impression that they were creating hindrance in the proposal. The other plea set up by them is that Sarabjit Singh appellant was only seventh class pass whereas Jasbir Kaur was graduate and he was not to her liking because he was not of good looking and used to take liquor quite often. On account of all these disparities the deceased had become irritant during her pregnancy. She had become short tampered as well. She, therefor, consumed some substance and started vomiting. Ranjit Singh informed the parents of the deceased through telephone who reached the hospital. Jasbir Kaur ultimately died in the hospital.

The defence plea of Sarabjit Singh appellant is that he is innocent and he never maltreated his wife Jasbir Kaur over any demand of dowry. He has also taken the same plea with regard to the pressure mounted upon Jasbir Kaur for arranging the marriage alliance between her sister and his brother (Sarabjit Singh) who was staying in America. The other plea taken by Sarabjit Singh is that on the fateful night, he had reached home a little late. An altercation had ensued between them and he had slapped her and after some time she started vomiting. He then pleaded that she was

immediately removed to DMC Hospital because she had presumably consumed some poisonous substance by mistake which was kept for preserving wheat in the house. It was also possible that she might had committed suicide since she had become hypersensitive due to pregnancy and used to get irritated on trivial matters. He, thus, pleaded his false implication in this case by the complainant side in connivance with the police.

In defence, DW1 Manglesh Kumar, Billing Clerk, DMC Hospital, DW2 Jarnail Singh, DW3 Tehal Singh, Clerk, Municipal Corporation Ludhiana and DW4 Darshan Singh have been produced.

After appreciating the entire evidence, all the three accused now stand convicted and sentenced as stated above. Aggrieved by the impugned judgment of conviction and sentence, they have preferred the present two appeals. A revision has also been filed by the complainant.

We have heard Mr. R.S.Ghai, learned Senior Advocate assisted by Mr. Bipin Ghai, Advocate and Mr. V.S. Rana, Advocate, learned counsel for all the three appellants, Mr. M.S. Sidhu, learned Senior Deputy Advocate General, Punjab assisted by Mr. H.S.Bhullar, learned counsel for the complainant.

Taking up the appeal of Ranjit Singh and Amrik Singh (Criminal Appeal No. 825-SB of 2001), Mr. Ghai states that both these

accused were Jeth (brothers-in-law) of Jasbir Kaur deceased and were staying separately from Sarabjit Singh. By no stretch of imagination they can be connected with the demand of dowry so as to bring their case within the mischief of section 498-A IPC for which they now stand convicted. Dwelling upon his arguments, Mr. Ghai submits that the present case provides us a typical illustration of the break-down of marriage for various other reasons which are wholly unconnected with the dowry and, therefore, the trial court should have made every effort to find the cause of marital discord. In the case in hand, the father of the deceased had knitted a wider net, implicating even the brothers-in-law (Jeth) by putting forth frivolous allegations of dowry demand. He then submits that even the factum of their joint living is brought on record for the first time before the trial court with an ulterior motive to secure their conviction whereas courts have time and again warned regarding over developing tendency of of implicating all the members of family of in-laws' in dowry cases. There is no cogent evidence to connect them even with the willful conduct, rather they have been booked on general allegations after taking undue advantage of so-called un-natrual death of Jasbir Kaur within a short span of her marriage.

Mr. Ghai submits that the complainant side was informed immediately of the occurrence as soon as Jasbir Kaur was removed to DMC Hospital as is clear from the statement of Jaspal Singh, the first informant,

the father of the deceased. The specific plea of Ranjit Singh is that he had informed Jaspal Singh about this all. Therefore, there cannot be any reason to disbelieve at least this part of the story. Had Ranjit Singh and Amrik Singh appellants actively participated in the commission of the alleged offence, an information to the parents would not have been flashed by them. This mitigating circumstance is indicative of the fact that the moment they came to know that Jasbir Kaur had consumed some substance, may be poisonous which was initially not known to them and was vomiting, the information was sent to the parents without wasting any time.

Mr. Ghai then submits that statement of Darshan Singh son of Darbara Singh DW4 who is brother-in-law of Amrik Singh accused when stepped into witness box, categorically stated that Amrik Singh was initially living in joint family after the marriage of his sister with him i.e. in October 1981 but they had started living separately since 1997. He further stated that his sister Harwinder Kaur was staying very happily in her in-laws house and he had also married his other sister with Ranjit Singh accused in the year 1993 finding family environment to be good. She too was happy in her in-laws house as there was no demand of dowry. From this, Mr. Ghai wants to develop that since two sisters of Darshan Singh (DW4) who were married to Amrik Singh and Ranjit Singh were staying happily, there could not be any reason or occasion for them to harass Jasbir Kaur wife of their

brother Sarabjit Singh that too for demand of dowry.

On the basis of the aforesaid submissions, Mr. Ghai prays for acquittal of Ranjit Singh and Amrik Singh accused.

Adverting to the case of Sarabjit Singh accused (Criminal Appeal No. 438-DB of 2001) who is husband of the deceased, Mr. Ghai submits that the learned trial court has not struck a fair balance in this case and rather adopted an emotional approach in convicting him. He submits that the prosecution case is hinging primarily on the evidence of Jaswinder Kaur and Jaspal Singh, the parents of the deceased who are not consistent in their statements with regard to the demand of dowry. In this regard our attention has been drawn to the statements of these two witnesses. The learned counsel submits that these two witnesses have been duly confronted with their previous statements as they had made material improvements almost on each vital aspect of the case. The main attack of the learned counsel is that Jaspal Singh had in fact discredited himself by departing from his earlier statement where he in his substantive statement, had stated that after two months of her marriage, she along with Sarabjit Singh had come to her house and disclosed her parents of being harassed by accused on account of bringing more dowry. He also stated that he did not tell the police about another date i.e. 23.4.1997 regarding demand of money for financing the elections of Amrik Singh or any demand made by him after

borrowing it from the Commission Agent or the demand of Rs 50,000/- made from the in-laws side. From this, the learned counsel wants to contend that the FIR which is a sketchy document has been prepared with deliberations so as to bring the case within the purview of section 304-B IPC for which ultimately Sarabjit Singh stands convicted.

Mr. Ghai then submits that the prosecution has projected the present case qua Sarabjit Singh as a case of a homicide and a very heavy reliance has been placed on the statement of Dr. Naveen Mittal, PW6 who had initially attended upon Jasbir Kaur when she was brought to DMC Hospital, Ludhiana by Sarabjit Singh himself. This doctor had stated that the deceased had disclosed that some tablets were given to her by her husband. He was, however, confronted with his first note where he had admitted that he recorded the word 'medicine' and not tablets. Mr. Ghai wants to submit that, in fact, the doctor had himself interpreted the words of the deceased in Punjabi which read " *Mere Ghar Wale Ne Mainu Maarya Hai"* (my husband gave me beatings). According to the learned counsel, expression '*Maarya*' (beatings) in Punjabi parlance can also be used for the purpose of beating and therefore, the statement of aforesaid Dr. Mittal cannot be said to be sufficient to conclude that it is positively proved that the husband had administered the tablet (poisonous substance) to the deceased. Mr. Ghai then submits that aluminium phosphide cannot be

administered comfortably by any one. Various studies conducted on this aspect are unanimous on the point that homicidal administration of the poison though not impossible but is nearly ruled out. In the case in hand, the same is the situation and the learned trial court just over-looked this aspect and held accused Sarabjit Singh, the husband of the deceased guilty under section 302 IPC. The learned counsel in the same strain submits that for the sake of arguments, even if it is said that Jasbir Kaur had consumed some poisonous material that too on account of the harassment meted out to her by her husband in connection with demand of dowry although the said fact is vehemently denied, still the present case would at the most fall within the mischief of section 304-B IPC and not section 302 IPC.

Mr. Ghai then contends that in the case of alleged dowry death, it is expected of the trial court to touch the core of the case so as to enable it to come to a definite conclusion that the deceased was in fact subjected to cruelty and harassment soon before the death on account of demand of dowry. In the case in hand, altogether a different shape with the allegation that a particular demand was made from the in-laws side at two different stages one to the tune of Rs 50,000/- at the time of contesting the Municipal elections for which a sum of Rs 20,000/- was given and thereafter another demand of Rs 5 lacs which was not met. According to the learned counsel, the complainant has miserably failed on this aspect and therefore, the

conviction of Sarabjit Singh accused even for section 304-B IPC is not sustainable.

Mr. Ghai lastly submits that once the main two charges fall on account of paucity of evidence, the conviction as recorded under section 498-A and also under section 314 IPC would also be unsustainable.

On the basis of the aforesaid submissions, Mr. Ghai prays for acquittal of all the three accused.

Mr. Sidhu, learned State counsel who is assisted by Mr. Bhullar submits that Jasbir Kaur has died an un-natural death within just nine months of her marriage in her matrimonial home and there is also cogent evidence on the file that her husband Sarabjit Singh who along with his two brothers and mother-in-law (since declared as a proclaimed offender) were harassing her for bringing more dowry. Ultimately poison was administered to her by her husband. He then submits that simply that Jasbir Kaur was removed to the hospital by her husband, it cannot be a ground to give him a clean chit of acquittal when there is other cogent evidence to prove all the charges against him. In the same breath, Mr. Sidhu submits that the may be the State has not preferred any appeal against the acquittal of Ranjit Singh and Amrik Singh accused with regard to sections 304-B IPC but in the present set of circumstances, they have, at least no escape from their liability so far as charge of section 498-A IPC is

concerned. He thus prays for conviction of all the three accused as already recorded by the trial court on different counts.

Mr. Bhullar adopts the arguments advanced by Mr. Sidhu.

Firstly, we are taking up the case of Ranjit Singh and Amrik Singh who stands convicted under section 498-A IPC. The impugned judgment indicates that these two accused have been convicted for the said offence by the learned trial court observing that they had connived with the principle accused (Sarabjit Singh the husband) with a view to coerce Jasbir Kaur to meet un-lawful demand of money stand proved. We have very minutely perused the statement of the two star witnesses in this regard namely Jaspal Singh, the father of the deceased and his wife Smt. Jaswinder Kaur. In his cross-examination, Jaspal Singh has categorically stated that he had not disclosed to the police that after two months of the marriage, his daughter had returned to their house and told them of being harassed by all the accused for bringing more dowry. He also stated that he had not disclosed to the police that on the next day, he accompanied by his wife and daughter, went to the house of the accused to make them understand not to make demand for more dowry as he has other daughters as well. He then stated that he did not disclose even this fact to the police that on 23.4.1997, a demand regarding money for financing the election of Amrik Singh or any payment made by him after borrowing it from the Commission Agent

was made. Another fact which is very important and with which this main witness has been confronted is that in his examination-in-chief he stated that his wife had told him about the harassment given to his daughter by all the accused and beating given by Sarabjit Singh and raising of demand of Rs 5 lac by all the accused. In his complaint which is the basis of the FIR, the beatings of the daughter by Sarabjit Singh alone was mentioned and at the same time demand of Rs 5 lacs by Sarabjit Singh alone was mentioned. The improvements made by this witness, in our view, were certainly with an ulterior motive which could not only be with an aim to implicate other persons of his choice. This is the reason that the present two accused were initially booked with general allegations and thereafter an attempt was made by this witness to improve upon his earlier case so as to seek conviction of both of them. We cannot give margin to the prosecution on these material discrepancies, which according to us, are worth consideration.

We are appreciating the case of the present two accused, yet, from another angle as well. Jaswinder Kaur PW2, the mother of the deceased did not say a word about any harassment meted out to her daughter by any of these accused for first eight months. It is only on 24.9.1997 that she received a telephonic call from her daughter asking her to come to her house and when she went to her, she was told by her daughter that the

accused were demanding Rs 5 lacs and she was given beatings by Sarabjit Singh her husband. She told that thereafter she inquired from mother-in-law (declared as a proclaimed offender) about the giving of beatings to her daughter by Sarabjit Singh and then mother-in-law made a demand of Rs 5 lacs in order to get start the work for Sarabjit Singh. This witness then stated that she had disclosed this fact to her husband. On the next day i.e. 25.9.1997, the incident had occurred. From this substantive piece of evidence it is very clear that whatever demand was made from the side of in-laws, that was after eight months of the marriage that too one day prior to the occurrence and it was only from the side of Sarabjit Singh the husband or at least by mother-in-law who has been declared as a proclaimed offender. Jaswinder Kaur does not utter a word that her daughter had also disclosed to her that the present two accused were also harassing her earlier with regard to any demand of dowry much less any specific demand. The statement of Jaswinder Kaur when read in conjunction with the substantive statement of her husband Jaspal Singh, we can safely conclude that a wider net has been knitted b y the father of the deceased in order to implicate the present two accused. The tendency to implicate even other family members of the in-laws of the deceased along with the husband has been deprecated by the Hon'ble Supreme Court in a plethora of judgments. Such type of over doing from the complainant side some times weaken the case of the

prosecution even against the main accused and therefore, the court is supposed to be very careful in appreciating the evidence of the prosecution in the right perspective.

The statement of Darshan Singh DW4 who had married off his two real sisters to the present two accused have stated that his sisters were staying happily and were never harassed by these two appellants at any stage on account of any demand, by itself would not be enough to give a clean chit to them for the charge of section 498-A IPC, but keeping in view the aforesaid basic flaws in the statements of the two main witnesses, the evidence of this witness (Darshan Singh) can certainly be read with advantage. Although this witness has stated that all the three brothers were staying in respective portions of the same house after separating themselves, yet the said fact is not in itself sufficient to conclude that the present two appellants had connived with Sarabjit Singh, the husband of the deceased with a view of coerce Jasbir Kaur to meet their un-lawful demand of money.

As a sequel to the aforesaid discussion, we are of the considered view that the prosecution has miserably failed to prove the charge of section 498-A IPC qua Ranjit Singh and Amrik Singh accused and, therefore, the impugned judgment of conviction qua them for the said charge stands disturbed. They consequently deserve acquittal. Ordered

accordingly.

However, after re-scanning the entire evidence very minutely, in our view, Sarabjit Singh accused deserves to be convicted as already recorded by the learned trial court.

Jaswinder Kaur and Jaspal Singh, the parents of the deceased are consistent in their substantive statements with regard to the demand of money qua the present accused. PW2 Jaswinder Kaur has categorically stated in her substantive statement that on 24.9.1997, she received a telephone call from her daughter asking her to see her and when she reached there, she was disclosed by her daughter (Jasbir Kaur) that she was being harassed by the accused. She also disclosed that a demand of Rs five lacs was made and on that account, she was beaten on 23.9.1997 by her husband Sarabjit Singh. She also stated that thereafter she inquired from mother-in-law of her daughter and she too made a demand of the said amount. She had disclosed this fact to her husband. Even if Jaspal Singh was confronted with his previous statement with regard to the demand of Rs 5 lacs qua Amrik Singh and Ranjit Singh who already stand acquitted by us on the basis of the detailed discussion herein-above, but from his evidence one fact is established that even in the initial statement, demand of Rs 5 lacs by Sarabjit Singh is mentioned. The giving of beatings by him is also mentioned in the said statement. The improvements made by the

parents of the deceased have made the case of the prosecution doubtful qua the participation of the brothers-in-law of the deceased (Jeth), but so far as involvement of Sarabjit Singh accused is concerned, in our view, both the witnesses are consistent on all the material aspects of the case with regard to demand of dowry and harassment. Certain minor discrepancies hither and thither in their statements cannot be given weightage to shatter the basic substratum of the case qua the husband.

We at the same time do not agree with the other submissions advanced by Mr. Ghai for the purpose of taking out Sarabjit Singh accused from the charge of section 302 IPC. We for the purpose of appreciating this aspect in the right perspective, have once again gone through the statement of Dr. Naveen Mittal PW6 who had initially examined Jasbir Kaur as a case of poison. He has prepared her injury report Ex. PJ. He deposed that the patient was pregnant for the last six months and that she told him that her husband had given her some tablets. He also proved the original bed head ticket Ex. PK and a writing made in his presence from the patient file where the remarks were that her husband had killed her. In vernacular it is to be read as " *Mere Ghar Wale Ne Mainu Maarya Hai".* He further deposed that the patient was conscious at the time of said writing although her BP was not recordable. The argument of Mr. Ghai that expression "*Maarya"* in common parlance of Punjabi language can be used for the purpose of

beating and therefore, it cannot be said from the aforesaid words that in fact Sarabjit Singh her husband had given her the poisonous substance (Aluminium phosphide tablets) for the purpose of killing. This argument does not appeal to us at all. The aforesaid few lines which were disclosed by Jasbir Kaur before the concerned doctor were not in the shape of giving the flash back of the entire episode. The doctor had suspected it to be a case of poisoning and therefore, he wanted to be clear about it. This was the reason that he put certain queries to the patient who as per records was brought by Sarabjit Singh appellant only. Thereafter what was stated by Jasbir Kaur at that stage before the doctor was concerning only with the substance which was given to her and not with regard to any other incident which includes giving of beatings etc. This is the reason that she blurted out in Punjabi, i.e. in her own language, the words " *Mere Ghar Wale Ne Mainu Maarya Hai".* We are also not convinced with other limb of argument of Mr. Ghai that various studies on the aspect of consumption of tablet of aluminium phosphide indicate that administration of poison is nearly ruled out. Each case has to be scanned and analysed in the light of its own peculiar facts. In the case in hand, Jasbir Kaur since deceased was beaten by the appellant on 23.9.1997 for the purpose of un-lawful demand of money. On the next date she was given the tablets which were of aluminium phosphide poisonous substance. The deceased clearly deposed

before Dr. Naveen Mittal that her husband had killed her. The writing Ex. PS of the deceased proved by Jaspal Singh her father could not be prepared in connivance with the doctor. We, therefore, consider it to be a very important piece of evidence in the shape of dying declaration of the deceased which was not at all as a result of any prompting or imagination. Even otherwise in the present set of circumstances, the statement of Jasbir Kaur could not have any tinge of adulteration from any outside source as she was removed to the hospital by her husband himself and before her parents could reach the hospital, she was no more in this world. It is a proved statement in itself and its brevity is the guarantee of its truth. The medical evidence in the shape of report Ex. PF/1 corroborates that it is a case of aluminium phosphide. Merely that the appellant had accompanied the deceased for admission in the hospital, the same does not exonerate him of his criminal liability. Therefore, from the established facts it is proved that accused Sarabjit Singh within a short span of marriage harassed and maltreated Jasbir Kaur on account of dowry demand which persisted soon before her death and ultimately she was administered poison (aluminium phosphide) or forced to consume on that account. Thus, charge of section 302 IPC against is proved to the hilt. The conviction under section 302 IPC is accordingly upheld.

Although the conviction of Sarabjit Singh under section 304-B

IPC, for which he has been sentenced for seven years only would not have its impact on the main charge of section 302 IPC for which his conviction stands confirmed by us and even otherwise sentence awarded under section 304-B IPC has to run concurrently with the life imprisonment awarded under section 302 IPC, yet technically section 304-B IPC will not be applicable in the light of the main charge of section 302 IPC being proved as held by Hon'ble Supreme Court in **Muthu Kutty vs State of Inspector of Police (SC)** 2005(1) RCR (Criminal) 639 (SC). However, in our view, no prejudice is caused to the appellant as he was originally charged for the offence under section 302 IPC along with section 304-B IPC.

We may observe here that may be Sarabjit Singh has not been charged for section 314 IPC but the same cannot be said to be an error to the extent so as not to hold him guilty for the said charge as the deceased was carrying a foetus of 6/7 months old baby who also died in the womb of the mother. Sarabjit Singh her husband was certainly in the know of this fact. Even otherwise he has been sentenced to undergo RI for seven years only and the sentence has been ordered to run concurrently with the sentence of life imprisonment awarded under section 302 IPC. Therefore, it has not caused any prejudice to the accused.

As a sequel to the aforesaid discussion, the net result now surfaces is that Criminal Appeal No. 438-DB of 2001 filed by Sarabjit

Singh accused stands dismissed and his conviction and sentence as awarded by the learned trial court on all the counts is confirmed whereas Criminal Appeal No. 825-SB of 2001 filed by Ranjit Singh and Amrik Singh accused stands allowed and they are acquitted of the charge of section 498-A IPC. They are stated to be on bail during the pendency of the appeal and shall now be discharged of their respective bail bonds.

Criminal Revision No. 382 of 2002 is disposed of accordingly.

(Virender Singh)
Judge

(A.N. Jindal)
Judge

September 05, 2006
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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision : September 05, 2006

Criminal Appeal No. 825-SB of 2001

Ranjit Singh and Amrik Singh versus State of Punjab

Coram: **Hon'ble Mr. Justice Virender Singh**
Hon'ble Mr. Justice A.N. Jindal

Present: Mr. V.S.Rana, Advocate for the appellants

Mr. M.S. Sidhu, Senior Deputy Advocate General, Punjab
assisted by Mr. H.S.Bhullar, Advocate for the complainant

Virender Singh, J.

For detailed judgment, see Criminal Appeal No. 438-DB of 2001, Sarabjit Singh versus State of Punjab

(Virender Singh)
Judge

(A.N. Jindal)
Judge

September 05, 2006
'dalbir'

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision : September 05, 2006

Criminal Revision No. 382 of 2002

Jaspal Singh versus Sarabjit Singh and others

Coram: **Hon'ble Mr. Justice Virender Singh**
Hon'ble Mr. Justice A.N. Jindal

Present: Mr. H.S.Bhullar, Advocate for the complainant/petitioner

Mr. R.S.Ghai, Senior Advocate with
Mr. Bipin Ghai, Advocate for Sarabjit Singh respondent

Mr. V.S.Rana, Advocate for Ranjit Singh &
Amrik Singh respondents

Virender Singh, J.

For detailed judgment, see Criminal Appeal No. 438-DB of 2001, Sarabjit Singh versus State of Punjab.

(Virender Singh)
Judge

(A.N. Jindal)
Judge

September 05, 2006
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